

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1690 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF JAIKONDAS NATHUBHAI MISTRY

Versus

GOVINDBHAI D CHAUHAN

Appearance:

MR AH MEHTA for Petitioners
MR DD VYAS for Respondent No. 1, 5, 6, 7
NOTICE SERVED for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/04/2000

ORAL JUDGEMENT

1. The petitioner is the original tenant against whom the respondents - plaintiffs had filed the suit being Regular Civil Suit No.7/79 in the court of the

Civil Judge (Senior Division) at Navsari. The case of the plaintiffs in the said suit was that, they are the owners of the suit property bearing House No.361 in Ward No.2 at Navsari. That the defendant was monthly tenant of the suit premises. He was irregular in payment of the rent and that he was in arrears of rent from 1.9.1976, thereafter, demand notice was given on or about 8.11.1978. In spite of the demand notice, the defendant failed to tender the arrears of rent which ultimately resulted in filing of the suit for possession on the ground of arrears of rent.

2. The defendant appeared in the suit and filed his written statement at Exh.13. It was contended that the suit was not maintainable. It was contended that the property was let out to the firm, namely, Vijaiy Wood Manufacturing Co. and that all the partners of the said firm were not given the notices. It is the say of the defendant that, after receiving the suit notice, he had gone to the landlords personally with the arrears of rent, but he was told by the landlords that, after consulting their advocate, they will accept the rent. It was also his contention that, this was yearly lease, and therefore, notice of demand was bad. On the aforesaid grounds the suit was resisted by the defendant.

3. Learned trial Judge raised various issues at Exh.15 and after recording the evidence and after hearing the arguments of the parties came to the conclusion that the defendant was in arrears of rent from 1.5.1976 upto 31.10.1978. It was found that, he was not ready and willing to pay the rent. The trial court also came to the conclusion that the suit notice was legal and valid. Ultimately, on the ground of arrears of rent, learned trial Judge decreed the suit of the plaintiff for possession.

4. The aforesaid decree of the trial court was challenged by the tenant by way of Regular Civil Appeal No.41/82. The aforesaid appeal was heard by the learned District Judge, Valsad at Navsari who by his order dated 29.9.1983 dismissed the said appeal with costs.

5. The defendant - tenant has filed the present civil revision application against the order of the appellate court by invoking the jurisdiction of this court under section 29(2) of the Bombay Rent Act.

6. I have heard the learned advocate Mr.A.H.Mehta, for the petitioners - tenants and Mr.D.D.Vyas, learned advocate for the respondents - landlords.

7. It was submitted by Mr.Mehta that the rent was not payable by month as the lease was for manufacturing purpose, and therefore, it was annual lease, and therefore, the demand notice would not be valid. He also submitted that, in any case, it should have been held that the tenant was ready and willing to pay the rent.

8. It is not in dispute that, before filing the suit the plaintiffs gave the notice demanding the arrears of rent at Exh.26. The tenant had received the same on 10.11.1978. Reply was also given by the original tenant at Exh.29. However, since the tenant had not paid up the arrears of the rent, the aforesaid suit was filed by the plaintiffs. Before filing the suit, demand notice under section 12(2) of the Bombay Rent Act is required to be given and it is not necessary to give notice for terminating the tenancy. Demand notice was therefore, given and the tenant had not complied with the suit notice nor has paid any rent within one month from the receipt of such notice. It cannot be said that the suit notice is bad in any manner. Learned appellate Judge has also considered the said aspect in para 10 of his judgment. I, therefore, do not find any substance in the argument of Mr.Mehta that the notice is not valid. It was next argued by Mr.Mehta that, partnership firm is the tenant, and therefore, notice was required to be given to the firm. It is not in dispute that the original tenant deceased Jaikisondas Nathubhai Mistry had taken the premises on lease in his personal capacity. Rent receipts are also in his name. There is nothing on record to show that the suit premises was let out to the partnership firm. There is, therefore, absolutely no substance in the agrument of Mr.Mehta that the partnership firm was the tenant of the sut premises. Lease in question is the monthly lease and not the yearly lease. Yearly lease would require compulsory registration as contemplated by section 106 of the Transfer of Property Act. Both the courts below were, therefore, justified in reaching the conclusion that, lease is a monthly lease and not the yearly lease. The tenant has not paid up the arrears of the rent within one month from the receipt of the suit notice, nor any dispute of the standard rent is taken within one month. Not only that, reply to the suit notice was also not given within one month. As found by the appellate court in para 13 of its judgment, the standard rent dispute was taken after a period of one month. Under the aforesaid circumstances, it was rightly found that, since the dispute of the standard rent was not taken within one month, the case would fall under section 12(3)(a) of the

Bombay Rent Act. In view of the judgment of the Honourable Supreme Court reported in 31(1) GLR, 209 if the dispute of the standard rent is not taken within one month and if the tenant has not paid the rent within one month from the receipt of the suit notice, the case would fall under section 12(3)(a) of the Bombay Rent Act and the decree is required to be passed under the aforesaid provision. No other arguments were advanced by Mr.Mehta and since I do not find any substance in the same, revision application is required to be dismissed and it is accordingly dismissed. Rule discharged with no order as to costs.

9. Mr.Mehta, learned advocate for the petitioners at this stage has requested for granting reasonable time to vacate the suit premises to the petitioners. Mr.Vyas, learned advocate for the respondents fairly submitted that, he has no objection if reasonable time for vacating the suit premises is granted. In the facts and circumstances of the case, the petitioners are granted one year time to vacate the suit premises. Accordingly, the decree for possession shall not be executed till 31.5.2001. The aforesaid time is granted on condition that the petitioners shall file usual undertaking before this court on or before 20.6.2000. The petitioners should clearly mentioned in the said undertaking that they are in exclusive possession of the suit premises and that without obstructing in any manner, they will hand over the vacant and peaceful possession to the respondents on or before the aforesaid date. The petitioners should also pay mesne profit regularly till they vacate the suit premises. If the aforesaid undertaking is not filed on or before 20.6.2000, or subsequently, if there is any breach of the said undertaking, it will be open for the respondents - decree holders to execute the decree for possession forthwith.

(P.B.Majmudar,J.)

(pathan)